FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.2498 of 2006
IN
WRIT PETITION NO.4949 of 2000

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr J.A.Udaypuri, for the applicant.
Mr Rajesh Dixit i/b Mr V.R.Tripathi for respondent no.7.

CORAM: D.B.BHOSALE,J.
DATED: 09/02/2007

P.C.:

Heard the learned counsel for the parties.

By this civil application, the applicant has made the following prayers:

(a) That the delay of 149 days in filing the present civil application be condoned.

(b) this Hon'ble Court be pleased to set aside ex-parte dismissal order dated 22nd March 2006 and restore the original petition, i.e. Writ Petition No.4949 of 2000 and the same be heard on its own merits.

(c) that pending the hearing and final disposal of the civil application, the respondent no.3 be restrained from in any manner taking any steps to execute the decree passed by the trial Court by Order dated 30th March, 1999 passed in Suit no.2287 of 1999 and further confirmed by the Appeal Court in Appeal No.300 of 1999 by order dated 21st June, 1999 in any manner whatsoever.

(d) If any delay to file this application may be condoned by this Hon'ble Court.

It appears that the writ petition was on board for final hearing on 22.3.2006. None appeared for the petitioner. In view thereof and in view of the past conduct of the petitioner,the writ petition was dismissed for default. I am informed that in June,2006 the decree obtained by the respondent-landlady on the ground of bonafide requirement was executed and the possession of the suit premises was restored. This civil application, however, came to be filed only on 28.9.2006. I perused the contents of the application as also the reply affidavit filed by 89 years old landlady and in particular the letter dated 14.9.2005 addressed to the applicant by the Deputy Registrar, High Court, Appellate side, on the direction of this court dated 5.9.2005. The order dated 5.9.05 reads thus:

" By order dated 18.7.2005 Justice Mohta had fixed this petition for hearing because the respondent is about 80 years old. She is present in the court.

Respondent’s counsel also is present.

2. Mr Malkani, learned counsel for the petitioner, states that the petitioner is not responding to his letters and, therefore, he may be allowed to withdraw his appearance. He has tendered in this Court copy of letter addressed by him to the Petitioner along with envelope, which shows that it has not been accepted by the petitioner and has come back unserved.

3. Office is, therefore, directed to issue a notice to the petitioner Iqbal s/o Ibrahim Bartanwalla, intimating to him that since he is not responding to his advocate Shri Malkani’s letters, Shri Malkani wants to withdraw his appearance. The petitioner may be asked whether he wants to engage any other advocate.

4. Place the matter on board on 19.9.2005. Copy of the letter of Mr Malkani along with R.A.D.Card and envelope are taken on record and marked "A" Collectively."

From perusal of this order as also the reply affidavit, the ground made out by the applicant for condonation of 149 days delay in filing this application is not only insufficient but also appears to be untrue. In the circumstances, this civil application is rejected on the ground of delay.

(D.B.BHOSALE,J.)